

Article - Health - General

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§18–338.3.

- (a) (1) In this section the following words have the meanings indicated.
- (2) (i) “Body fluids” means:
 - 1. Any fluid containing visible blood, semen, or vaginal secretions; or
 - 2. Cerebrospinal fluid, synovial fluid, or amniotic fluid.
- (ii) “Body fluids” does not include saliva, stool, nasal secretions, sputum, tears, urine, or vomitus.
- (3) “Exposure” means:
 - (i) Percutaneous contact with blood or body fluids;
 - (ii) Mucocutaneous contact with blood or body fluids;
 - (iii) Open wound, including dermatitis, exudative lesions, or chapped skin, contact with blood or body fluids for a prolonged period; or
 - (iv) Intact skin contact with large amounts of blood or body fluids for a prolonged period.
- (4) “First responder” means an individual who:
 - (i) Is licensed or certified under § 13–516 of the Education Article; and
 - (ii) Provides services to an individual before the individual is admitted to a hospital.
- (5) (i) “Health care provider” means an individual who is licensed, certified, or otherwise authorized under the Health Occupations Article or this article to provide health or medical care in:
 - 1. The ordinary course of business or practice of a profession; or

2. An approved education or training program.

(ii) “Health care provider” includes any agent or employee of a hospital.

(iii) “Health care provider” does not include an individual who is eligible to receive notification under the provisions of § 18–213 of this title, including any law enforcement officer or any member of any fire department, ambulance company, or rescue squad.

(6) “HIV” means the human immunodeficiency virus that causes acquired immune deficiency syndrome.

(7) “Hospital” has the meaning stated in § 19–301 of this article.

(8) “Public safety worker” means:

(i) A career or volunteer member of a fire, rescue, or emergency medical services department, company, squad, or auxiliary;

(ii) A law enforcement officer;

(iii) The State Fire Marshal or a sworn member of the State Fire Marshal’s office; or

(iv) A forensic scientist who works under the direction of a law enforcement agency.

(b) Notwithstanding the provisions of § 18–338.1 of this subtitle, the designated infectious disease/communicable disease officer of a hospital shall order a test for the presence of antibodies to the human immunodeficiency virus (HIV) under subsection (d) of this section when:

(1) There has been an exposure in a hospital between a patient and a health care provider, an exposure between a patient and a first responder, or an exposure between a patient and a public safety worker before admission of the patient to a hospital, that, in accordance with the Centers for Disease Control and Prevention recommendations, would warrant recommending or offering chemoprophylaxis treatment for the health care provider, first responder, or public safety worker;

(2) (i) Informed consent, or substitute consent as required under § 18–338.1(c) of this subtitle, of the patient to test a blood sample of the patient for

the presence of HIV was sought and the patient was unavailable or unable to consent;
or

(ii) Informed consent, or substitute consent as required under § 18–338.1(c) of this subtitle, of the patient to test a blood sample already obtained from the patient for the presence of HIV was sought, the patient refused, and the patient was informed of the provisions of this subsection;

(3) (i) In accordance with hospital procedures, the health care provider involved in the exposure has given prompt notice of the exposure to the designated hospital infectious disease/communicable disease officer where the exposure occurred; or

(ii) 1. A. The first responder involved in the exposure has given prompt notice to the medical director with jurisdiction over the first responder; or

B. The public safety worker involved in the exposure has given prompt notice to the medical director with jurisdiction over the public safety worker; and

2. The medical director has given prompt notice to the designated hospital infectious disease/communicable disease officer where the patient is admitted;

(4) The health care provider, first responder, or public safety worker involved in the exposure has given informed consent and has submitted a blood sample to be tested for the presence of HIV; and

(5) The designated hospital infectious disease/communicable disease officer has made a determination, in accordance with the Centers for Disease Control and Prevention recommendations, that the testing of blood samples or other body fluids of the patient for the presence of antibodies to the human immunodeficiency virus (HIV) would be helpful in managing the risk of disease and health outcome of the health care provider, first responder, or public safety worker.

(c) If there has been an exposure between a first responder and an individual or a public safety worker and an individual before the admission of the individual to a hospital:

(1) The first responder or public safety worker shall give notice to the first responder's or public safety worker's medical director in accordance with subsection (b)(3)(ii)1 of this section;

(2) The medical director shall act as an intermediary at all times between the first responder or public safety worker and the designated hospital infectious disease/communicable disease officer; and

(3) The medical director and the designated hospital infectious disease/communicable disease officer shall ensure that all communications and information related to the exposure of the first responder or public safety worker are confidential.

(d) If the requirements of subsections (b) and (c) of this section are satisfied, the designated hospital infectious disease/communicable disease officer shall order tests to be conducted for the presence of antibodies to the human immunodeficiency virus (HIV) using a test procedure approved by the Department on:

(1) Blood samples already obtained from the patient; or

(2) Blood samples or other body fluids collected for the purpose of HIV testing under this section.

(e) When the designated hospital infectious disease/communicable disease officer obtains the results of an HIV test conducted in accordance with the provisions of subsection (d) of this section, the designated hospital infectious disease/communicable disease officer shall attempt to directly notify the patient of the results of the HIV test and, to the extent possible, in a manner that will protect the confidentiality of the health care provider, the first responder, or the public safety worker and the patient.

(f) If the results of an HIV test conducted in accordance with the provisions of subsection (d) of this section are positive, the designated hospital infectious disease/communicable disease officer shall provide or arrange for the provision of appropriate counseling and treatment recommendations to the health care provider, first responder, or public safety worker and the patient.

(g) (1) Notwithstanding the provisions of Title 4, Subtitle 3 of this article, the medical records, including any physician order for an HIV test or the results of an HIV test conducted under this section, may not be documented in the medical record of the patient, health care provider, first responder, or public safety worker.

(2) The hospital where the exposure occurred shall maintain a separate confidential record or incident report for all HIV tests conducted under this section.

(3) Each hospital shall adopt procedures for the confidential HIV testing of blood samples or other body fluids used or collected for purposes of this section.

(4) Except as provided in paragraph (5) of this subsection, the medical records, including any physician order for an HIV test or the results of any HIV test conducted under this section, are:

(i) Confidential; and

(ii) Not discoverable or admissible in evidence in any criminal, civil, or administrative action.

(5) If the identity of the patient or any other information that could be readily associated with the identity of the patient is not disclosed, the results of an HIV test conducted on a patient for purposes of this section may be introduced into evidence in any criminal, civil, or administrative action including the adjudication of a workers' compensation claim.

(h) The costs incurred in performing an HIV test on a patient in accordance with the provisions of this section shall be paid by the hospital.

(i) Each hospital shall develop written procedures to implement the provisions of this section.

(j) A health care provider, first responder, public safety worker, or hospital or designee of a hospital acting in good faith to provide notification or maintain the confidentiality of the results of a test conducted under this section may not be held liable in any cause of action related to a breach of patient, health care provider, first responder, or public safety worker confidentiality.

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